

1 THE HONORABLE RICARDO S. MARTINEZ
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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10 COMAIR LIMITED,
11 Plaintiff,
12 v.
13 THE BOEING COMPANY, A DELAWARE
14 CORPORATION,
15 Defendant.

CASE NO. 2:23-cv-00176-RSM
STIPULATED PROTECTIVE ORDER

16. **PURPOSES AND LIMITATIONS**

17. Discovery in this action is likely to involve production of confidential, proprietary, or
18. private information for which special protection may be warranted. Accordingly, the parties hereby
19. stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
20. acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
21. protection on all disclosures or responses to discovery, the protection it affords from public
22. disclosure and use extends only to the limited information or items that are entitled to confidential
23. treatment under the applicable legal principles, and it does not presumptively entitle parties to file
24. confidential information under seal.

25. **“CONFIDENTIAL” MATERIAL**

26. “Confidential” material to the extent it is produced or exchanged shall include the

1 following information, documents and tangible things (regardless of the medium or manner in
2 which it is generated, stored, or maintained): (a) information prohibited from disclosure by statute;
3 (b) non-public information about Boeing airplane sales and servicing contracts; (c) non-public
4 information about the design, manufacturing, certification, marketing, sale, delivery, and
5 performance of Boeing airplanes; (d) non-public information about revenue, pricing, profitability,
6 or competition-sensitive material; and (e) non-public personal information of individuals,
7 including medical information, tax information, and personnel records. The identification of any
8 of the aforementioned types of information shall not be construed as an admission or concession
9 that such information is relevant to or otherwise subject to discovery.

10 3. **“HIGHLY CONFIDENTIAL” MATERIAL**

11 “Highly Confidential” material to the extent it is produced or exchanged shall be used to
12 mean information, documents and tangible things (regardless of the medium or manner in which
13 it is generated, stored, or maintained) containing information that the producing party reasonably
14 believes to be so highly sensitive that it could cause significant competitive harm if revealed
15 beyond the universe of people entitled to see “Confidential” material. Highly Confidential
16 material includes highly sensitive strategic corporate information related to financial or pricing
17 information, or information about confidential third-party agreements, revenue, profit, or loss
18 information. Highly Confidential material shall not include any information that has been made
19 public or that it is legitimately subject to public disclosure.

20 4. **“EXPORT CONTROLLED MATERIAL”**

21 “Export Controlled Material” to the extent it is produced or exchanged shall include
22 information, technical data, and/or technology that is subject to the requirements of the Export
23 Administration Regulations (“EAR”), 15 C.F.R. §§ 730.1, *et seq.* and/or the International Traffic
24 in Arms Regulations, which implement the Arms Export Control Act (“ITAR”), 22 CFR §§ 120.1
25 *et seq.* Export Controlled Material may or may not also include Confidential Material.
26 Information subject to the EAR and ITAR shall at all times remain Export Controlled Material

1 regardless of whether such designation is made, in accordance with federal law. Such material
 2 shall be marked clearly as "EXPORT CONTROLLED MATERIAL."¹

3 5. SCOPE

4 The protections conferred by this agreement cover not only Designated Material but also
 5 (1) any information copied or extracted from Designated Material; (2) all copies, excerpts,
 6 summaries, or compilations of Designated Material; and (3) any testimony, conversations, or
 7 presentations by parties or their counsel that might reveal Designated Material.

8 However, the protections conferred by this agreement do not cover information that is in
 9 the public domain or becomes part of the public domain through trial or otherwise. This Order
 10 shall not abrogate or diminish any contractual, statutory, or other legal privilege, obligation, or
 11 right of any party or person, nor obligate any party or person to provide any discovery to which it
 12 asserts objections.

13 6. ACCESS TO AND USE OF DESIGNATED MATERIAL

14 6.1 Basic Principles. A receiving party may use Designated Material that is disclosed
 15 or produced by another party or by a non-party in connection with this case only for prosecuting,
 16 defending, or attempting to settle this litigation. Designated Material may be disclosed only to the
 17 categories of persons and under the conditions described in this agreement. Designated Material
 18 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
 19 that access is limited to the persons authorized under this agreement.

20 6.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 21 by the court or permitted in writing by the designating party, a receiving party may disclose any
 22 "Confidential" material only to:

23 (a) the receiving party's counsel of record in this action, as well as employees

25 ¹ Information designated as Confidential, Highly Confidential, Export Controlled Material, or ITAR-Controlled
 26 Material are together referred to as "Designated Material."

1 of counsel to whom it is reasonably necessary to disclose the information for this litigation and
2 who have been informed of their obligations hereunder;

3 (b) the officers, directors, or employees (including in-house counsel and
4 outside counsel) of the receiving party to whom disclosure is reasonably necessary for this
5 litigation and who have been informed of their obligations hereunder;

6 (c) experts and consultants to whom disclosure is reasonably necessary for this
7 litigation, and/or Comair's liquidators, provided that they sign the attached "Acknowledgment and
8 Agreement to Be Bound" (Exhibit A-1);

9 (d) the court, court personnel, court reporters and any mediators retained in this
10 action, including their respective staff;

11 (e) copy, imaging, or e-discovery services employees retained by counsel to
12 assist in the duplication or processing of confidential material, provided that counsel for the party
13 retaining the service instructs the service not to disclose any Confidential material to third parties,
14 store any such materials using the same level of care and data security it applies to its own
15 Confidential information, and to immediately return all originals and copies of any Confidential
16 material once possession is no longer necessary to perform the service;

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
19 (Exhibit A-1), unless otherwise agreed by the designating party or ordered by the court. Pages of
20 transcribed deposition testimony or exhibits to depositions that reveal Confidential material must
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
22 under this agreement;

23 (g) the author or recipient of a document containing the information;

24 (h) custodian or other person who otherwise possessed or knew the
25 information independent of this litigation;

26 (i) any mock juror or professional mock jury provider retained by any of the

1 parties to this litigation and who has signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A-1); and

3 (j) any other person as to whom the designating party first agrees in writing
4 and who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A-1).

5 6.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by the designating party, a receiving party
7 may disclose any “Highly Confidential” material only to the persons identified in paragraphs
8 7.2(a), (b), (c), (d), (e), (f), (g), (h) and (j) who have signed the “Acknowledgment and Agreement
9 to Be Bound” (Exhibit A); provided however that “Highly Confidential” material shall not be
10 disclosed to the receiving party’s officers, directors, employees or agents, or to Comair’s
11 liquidators (except for in-house and outside litigation counsel employed by the receiving party
12 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A-1);

13 6.4 Handling of Export Controlled Material. Each Party has the responsibility to ensure
14 that Export Controlled Material in its possession, custody or control is not made public nor
15 otherwise “exported” (as that term is described in 15 C.F.R. § 734.13 or 22 C.F.R. § 120.17) except
16 as permitted by law and regulations. To accomplish this, the following procedures shall apply to
17 all EAR-Controlled Material and ITAR-Controlled Material produced in this matter:

18 (a) The producing party shall ensure that any document containing Export
19 Controlled Material is marked as such in good faith.

20 (b) A receiving party shall ensure that initial receipt and storage of all produced
21 documents are limited to U.S. Persons in the United States. If a receiving party then wishes to
22 export produced documents, they may do so only in accordance with federal law and regulations.
23 To the extent a license from the U.S. Department of State is required to export documents, the
24 receiving party is solely responsible for obtaining such a license.

25 (c) If the receiving party is uncertain whether or what portion of a document
26 the designating party contends contains Export Controlled Material, the parties shall meet and

1 confer in attempt to resolve the uncertainty in good faith. Prior to or during the meet-and-confer,
 2 the receiving party shall explain its uncertainty and, in response, the designating party will clarify
 3 the basis for the designation and identify the information it contends is Export Controlled Material.
 4 If after the conference the matter remains disputed, the designating party has the burden in any
 5 challenge proceeding.

6 (d) Notwithstanding such efforts to resolve the uncertainty, each party remains
 7 solely responsible for its own compliance with applicable law and regulations.

8 (e) No person who is not lawfully able to review Export Controlled Material
 9 shall be permitted to review Export Controlled Material.

10 6.5 Filing Designated Material. Before filing Designated Material or discussing or
 11 referencing such material in court filings, the filing party shall confer with the designating party,
 12 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
 13 remove the designation, whether the document can be redacted, or whether a motion to seal or
 14 stipulation and proposed order is warranted. During the meet and confer process, the designating
 15 party must identify the basis for sealing the specific Designated Material at issue, and the filing
 16 party shall include this basis in its motion to seal, along with any objection to sealing the
 17 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
 18 standards that will be applied when a party seeks permission from the court to file material under
 19 seal. A party who seeks to maintain the confidentiality of its information must satisfy the
 20 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
 21 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
 22 the strong presumption of public access to the Court's files.

23 7. DESIGNATING PROTECTED MATERIAL

24 7.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
 25 or non-party that designates information or items for protection under this agreement must take
 26 care to limit any such designation to specific material that qualifies under the appropriate

1 standards. The designating party must designate for protection only those parts of material,
2 documents, items, or oral or written communications that qualify, so that other portions of the
3 material, documents, items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
6 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
7 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
8 and burdens on other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated for
10 protection do not qualify for protection, the designating party must promptly notify all other parties
11 that it is withdrawing the mistaken designation.

12 7.2 Manner and Timing of Designations. Except as otherwise provided in this
13 agreement (see, e.g., second paragraph of section 8.2(b) below), or as otherwise stipulated or
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must
15 be clearly so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (e.g., paper or electronic documents and
17 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
18 the designating party must affix the appropriate designation to Designated Material using its
19 established e-discovery process, or, if the material is not electronically stored information or
20 otherwise in electronic form, clearly marked to identify it as Designated Material.

21 (b) Testimony given in deposition or in other pretrial proceedings: the parties
22 and any participating non-parties must identify on the record, during the deposition or other pretrial
23 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
24 after reviewing the transcript. Any party or non-party may, within forty-five (45) days after
25 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
26 transcript, or exhibits thereto, as Designated Material. If a party or non-party desires to protect

1 Designated Material at trial, the issue should be addressed during the pre-trial conference.

2 (c) Other tangible items: the producing party must affix in a prominent place
3 on the exterior of the container or containers in which the information or item is stored the
4 appropriate designation to identify Designated Material. If only a portion or portions of the
5 information or item warrant protection, the producing party, to the extent practicable, shall identify
6 the protected portion(s).

7 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the designating party's
9 right to secure protection under this agreement for such material. Upon timely correction of a
10 designation, the receiving party must make reasonable efforts to ensure that the material is treated
11 in accordance with the provisions of this agreement.

12 8. CHALLENGING DESIGNATIONS

13 8.1 Timing of Challenges. Any party or non-party may challenge the designation of
14 Designated Material at any time. Unless a prompt challenge to a designating party's designation
15 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
16 significant disruption or delay of the litigation, a party does not waive its right to challenge a
17 designation by electing not to mount a challenge promptly after the original designation is
18 disclosed. The parties must use all reasonable efforts to make challenges to designations at least
19 30 days prior to the trial date.

20 8.2 Meet and Confer. The parties must make every attempt to resolve any dispute
21 regarding designations without court involvement. Any motion regarding designations or for a
22 protective order must include a certification, in the motion or in a declaration or affidavit, that the
23 movant has engaged in a good faith meet and confer conference with other affected parties in an
24 effort to resolve the dispute without court action. The certification must list the date, manner, and
25 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a
26 telephone conference.

1 8.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 2 intervention, the designating party must file and serve a motion to maintain the Designated
 3 Material under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable)
 4 within 14 days following the conclusion of the parties' meet and confer efforts. The burden of
 5 persuasion in any such motion shall be on the designating party. Frivolous challenges or refusals
 6 to withdraw and/or those made for an improper purpose (*e.g.*, to harass or impose unnecessary
 7 expenses and burdens on other parties) may expose the challenging and/or designating party to
 8 sanctions. All parties shall continue to maintain the material in question as required by this
 9 agreement until the court rules on the challenge.

10 9. DESIGNATED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 11 LITIGATION

12 If a party is served with a subpoena or a court order issued in other litigation that compels
 13 disclosure of any Designated Material that party must:

14 (a) promptly notify the designating party in writing and include a copy of the
 15 subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to
 17 issue in the other litigation that some or all of the material covered by the subpoena or order is
 18 subject to this agreement. Such notification shall include a copy of this agreement; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 20 the designating party whose Designated Material may be affected.

21 10. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Designated
 23 Material to any person or in any circumstance not authorized under this agreement, the receiving
 24 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
 25 (b) use its best efforts to retrieve all unauthorized copies of the Designated Material, (c) inform
 26 the person or persons to whom unauthorized disclosures were made of all the terms of this

1 agreement, and (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A-1. The unauthorized disclosure of
3 Designated Material does not alter the status of the protected material or limit the rights or remedies
4 of the designating party.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
6 MATERIAL

7 When a producing party gives notice to receiving parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Within fourteen
10 business days of providing notice, the producing party shall provide privilege log entry/entries
11 covering such inadvertently produced material. Nothing in this paragraph or order curtails a
12 party’s right to challenge the propriety of a designation or privilege assertion with the Court, or to
13 assert that the holder of the privilege failed to take reasonable steps to prevent disclosure or failed
14 to promptly take reasonable steps to rectify the error. This provision is not intended to modify
15 whatever procedure may be established in an e-discovery order or agreement that provides for
16 production without prior privilege review. The parties agree to the entry of a non-waiver order
17 under Fed. R. Evid. 502(d) as set forth herein.

18 12. NON TERMINATION AND RETURN OF DOCUMENTS

19 Within 90 days after the termination of this action, including all appeals, each receiving
20 party must certify destruction of all Designated Material to the producing party, including all
21 copies, extracts and summaries thereof.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
25 product, even if such materials contain Designated Material. Counsel may also retain internal work
26 product or email correspondence that may discuss, summarize, or attach Designated Materials, under

1 the express understanding that any such materials may not be used for any other purpose and the
2 obligations of confidentiality imposed by this Order remain.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a
4 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: December 27, 2023

/s/ Kristy Schlesinger

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13 DATED: December 27, 2023

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20 *Attorneys for Defendant the Boeing Company*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents, electronically stored information (ESI) or information, whether inadvertent or
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
6 documents, including the attorney-client privilege, attorney work-product protection, or any other
7 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
8 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
9 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
10 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
11 segregation of privileged and/or protected information before production. Information produced
12 in discovery that is protected as privileged or work product shall be immediately returned to the
13 producing party.

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15 DATED: January 3, 2024

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18 RICARDO S. MARTINEZ
19 UNITED STATES DISTRICT JUDG

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EXHIBIT A-1

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of Comair Limited v. The Boeing Company (Case No. 2:23-cv-00176-RSM). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date:

17 | City and State where sworn and signed:

18 Printed name:

19 || Signature: